

HOUSE BILL 2392

By Miller

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 21; Title 39 and Title 50, Chapter 1,
relative to employee workplace safety.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, Part 5, is amended by deleting the part and substituting instead the following:

50-1-501.

(a) This part shall be known and may be cited as the "Healthy Workplace Act."

(b) The purpose of this part is to ensure legal protection from harassment, intimidation, or bullying in the workplace motivated by race, color, sex, sexual orientation, gender identity, national origin, religion, age, or any constitutionally protected classification.

50-1-502.

As used in this part, "harassment, intimidation, or bullying" means any act:

(1) That substantially interferes with a person's work performance or creates an intimidating, hostile, or offensive working environment; and

(2)

(A) If the act takes place at the employee's workplace or at any employer sponsored activity, has the effect of:

(i) Physically harming an employee or damaging an employee's personal property;

(ii) Knowingly placing an employee in reasonable fear of physical harm to the employee or damages the employee's property;

(iii) Causing emotional distress to an employee; or

(iv) Creating a hostile work environment; or

(B) If the act takes place outside of the employee's workplace or at any employer sponsored activity, that is directed specifically at an employee and has the effect of creating a hostile work environment or otherwise creating a substantial disruption to the workplace environment.

50-1-503.

It is an unlawful employment practice for:

(1) Any employer or employee to subject another employee to harassment, intimidation, or bullying; or

(2) Any employer or employee to retaliate in any manner against an employee who has opposed any unlawful employment practice under this part, or who has made a charge, testified, assisted, or participated in any manner in an investigation or proceeding under this part, including, but not limited to, internal complaints and proceedings, arbitration and mediation proceedings, and legal actions.

50-1-504.

It is a defense under § 50-1-503:

(1) For an employer, if the employer exercised reasonable care to prevent and correct promptly any unlawful employment practice;

(2) For an employee, if the employee unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer; and

(3) If the employee acted in violation of § 50-1-503 at the direction of the employer under actual or implied threat of an adverse employment action.

50-1-505.

(a) Any person injured by any act in violation of this part shall have a civil cause of action in chancery court or circuit court.

(b) An action under this part must be commenced no later than one (1) year after the last act that constitutes the alleged violation of § 50-1-503.

(c) When an employer or employee is found, by a court of competent jurisdiction, to be in violation of § 50-1-503, the court may enjoin the employer or employee from engaging in the unlawful employment practice and may order any other relief necessary, including, but not limited to, the removal of the offending party from the work environment, medical expenses, compensation for pain and suffering, compensation for emotional distress, punitive damages, and attorney's fees.

50-1-506.

(a) Nothing in this part supersedes the rights and obligations provided under the National Labor Relations Act (29 U.S.C. § 151 et seq.), any collective bargaining agreement, or other applicable federal or state labor laws.

(b) Nothing in this part exempts or relieves any person from any liability, duty, penalty, or punishment provided by any other law of this state.

(c) If any employer knowingly, willfully, or intentionally causes a medical or wage loss claim to be paid under health or sickness and accident insurance, or fails to provide reasonable and necessary medical treatment, including a failure to reimburse when the employer knew that the claim arose out of a compensable work-related injury and should have been submitted under its workers' compensation insurance coverage, then a civil penalty of five hundred dollars (\$500) shall be assessed against the employer, and the

employer may not offset any sickness and accident income benefit paid to the employee against its temporary total disability benefit payment liability due to the employee pursuant to this part. The commissioner of labor and workforce development has the authority to assess and collect the civil penalty.

(d) This section does not limit any person's right to pursue any additional civil remedy otherwise allowed by law.

50-1-507.

(a) Each employer, in consultation with the department of labor and workforce development, shall adopt a policy prohibiting harassment, intimidation, or bullying by December 31, 2019.

(b) Employers shall include in the policy:

- (1) A statement prohibiting harassment, intimidation, or bullying;
- (2) A definition of harassment, intimidation, or bullying;
- (3) A description of the type of behavior expected from each employee;
- (4) A statement of the consequences and appropriate remedial action for any employee who commits an act of harassment, intimidation, or bullying;
- (5) A procedure for reporting an act of harassment, intimidation, or bullying, including a provision that permits a person to anonymously report an act of harassment, intimidation, or bullying. Nothing in this section permits formal disciplinary action based solely on an anonymous report;
- (6) A procedure for the prompt investigation of a reported act of harassment, intimidation, or bullying;
- (7) A statement of the manner in which an employer shall respond after an act of harassment, intimidation, or bullying is reported, investigated, and confirmed;

(8) A statement prohibiting retaliation against any person who reports an act of harassment, intimidation, or bullying and specifying the consequences and appropriate remedial action for a person who engages in the retaliation;

(9) A statement of the consequences and appropriate remedial action for a person found to have intentionally falsely accused another of having committed an act of harassment, intimidation, or bullying as a means of retaliation or as a means of harassment, intimidation, or bullying;

(10) A statement of how the policy is to be publicized within the workplace, including a notice that the policy applies to behavior at employer or work-sponsored activities; and

(11) The identification by job title of work officials responsible for ensuring that the policy is implemented.

(c) Each employer shall provide all employees with a copy, by December 31, 2019, of the policy along with information on the policy's implementation, bullying prevention, and strategies to address bullying and harassment in the workplace. In addition, each employer shall provide training to employees regarding the policy and appropriate procedures relative to implementation of the policy. The department of labor and workforce development shall provide guidelines for the training and provide recommendations of appropriate, available, and free bullying and harassment prevention resources.

SECTION 2. The commissioner is authorized to promulgate rules to effectuate the purposes of this act. All rules must be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. This act shall take effect July 1, 2018, the public welfare requiring it, and shall apply to prohibited conduct occurring on or after that date.